IN THE HIGH COURT OF DELHI AT NEW DELHI

Writ Petition (C) Nos. 12875-83 of 2006

Date of Decision : May 31, 2007

Sheela Joshi & Ors. .... Petitioner
Through Mr. Arvind K. Sharma, Advocate

Versus

Indian Airlines Ltd. ..... Respondent
Through Mr. Gopal Subramaniam Sr. Advocate with Ms. Veronica Mohan and Mr. Subhru ayal, Advocates

WITH

Writ Petition (C) Nos. 14443-44 of 2006

Shivani Mathur & Anr. .... Petitioner
Through Mr. Arvind K. Sharma, Advocate

Versus

Indian Airlines Ltd. ..... Respondent
Through Mr. Gopal Subramaniam Sr. Advocate with Ms. Veronica Mohan and Mr. Subhru Sayal, Advocates

WITH

Writ Petition (C) No. 17318 of 2006

Anne Patricia Dyook .... Petitioner
Through Mr. Arvind K. Sharma, Advocate

Versus

Indian Airlines Ltd. ..... Respondent
Through Mr. Gopal Subramaniam Sr. Advocate with Ms. Veronica Mohan and Mr. Subhru Sayal, Advocates

&

WITH

Writ Petition (C) No. 1365 of 2007

Kiran Chaudhary .... Petitioner
Through Mr. Arvind K. Sharma, Advocate

Versus

Indian Airlines Ltd. ..... Respondent
Through Mr. Gopal Subramaniam Sr. Advocate with Ms. Veronica Mohan and Mr. Subhru Sayal, Advocates

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether Reporters of the Local Papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

REKHA SHARMA, J.

The Air Hostesses in the employment of Indian Airlines are supposed to maintain their body weight within limits prescribed in the weight charts issued from time to time. The petitioners having busted those charts have been grounded and have been told that till such time they knock off the extra weight they will be treated on leave if there is any to their credit or otherwise on 'leave without pay'. The petitioners say that this order is unreasonable, unfair, without sanction of law and allege that it is contrary to the Indian Airlines Employees Service Regulations. They also view it as an affront to their dignity, honour and womanhood.

The respondent feels differently. It says that the job profile of the Air Hostesses is such that it requires of them to maintain certain standard of weight. Keeping that in view their weight was made a

condition of their appointment and the order issued are not only in consonance with the terms of their appointment but have also been necessitated to meet the challenges of a competitive market in the air traffic business of which hospitality is an integral part. As per the Airlines the directions requiring the Air Hostesses to maintain body weight standards have been in place since long and having been accepted, any challenge to the same now is not only belated but unwarranted.

Having provided a bird's eye view of the issue involved let me proceed with the details.

The petitioners have preferred four writ petitions. Since a common question has been raised in all the petitions, Writ Petition No. 12875-83 of 2006 filed by Ms. Sheila Joshi & others shall be treated as the lead case. The petitioners have been working as Cabin crew with the Indian Airlines Ltd. since 1982 in the Inflight Service Department except petitioner in writ petition (C) No. 17318/06 who is working in the Southern Region. Initially they were offered appointments as Trainee Air Hostesses on certain terms and conditions of which clauses 8 & 9 are important. They read as under :-

> 8. While undergoing Training in the Indian Airlines and the appointment as Air-Hostesses, you will be governed by the Indian Airlines Service Regulations applicable to the Flying Crew and Standing Orders concerning discipline and appeals as framed/ amended by Indian Airlines from time to time.
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> 9. During the training period and on appointment as Air Hostesses, your services are liable to be terminated under the following circumstances
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> I) in the event of your getting married before the specified period .

II) If you (a) fail to maintain vision without Glasses

(b) do not maintain weight within the prescribed limits

(c) develop air sickness.

The above offer of appointment, interalia, containing the aforesaid terms and conditions was accepted by the Air Hostesses and in token of their acceptance they appended their signatures thereon. On successful completion of their training they were appointed on regular basis and were issued fresh appointment letters. Admittedly, those appointment letters also contained the aforesaid terms and conditions. A sample copy of the appointment letter has been filed by the Indian Airlines in WP(C) No. 1365/07 by Ms. Kiran Chauhdary Vs. Indian Airlines. At the time of their appointment, a weight chart issued in the year 1981 was in existence. It provided for the minimum and the maximum weight. It was prepared with reference to age and height. The Air Hostesses were supposed to adhere to the said chart and keep their body weight within the minimum and the maximum limit laid down therein. It so happened that on November 4, 1987 the Airlines issued a circular stating therein that the revised height and weight chart was under preparation by the Chief Medical Officer and that pending finalization of the same Cabin Crew should be subjected to weight check twice a year. It also provided that those who were found exceeding the laid down standards upto 10% would be given a letter to reduce their weight to standard weight within a specified period and if after the expiry of that period the Cabin Crew failed to come to the standard body weight he or she should be taken off flying

and treated on leave or leave without pay if no leave was due till she or he attained the standard weight. It further provided that in cases where the excess weight was over 10% of the standard weight such Cabin Crew should be taken off flight with immediate effect and given a letter to reduce the standard weight by a specified period. On June 4,1990 the Airlines issued a Memo indicating the names of four members of the cabin crew including that of the petitioner Sheila Joshi who were found to be in excess of weight over and above the 10% grace. They were advised to reduce their weight by 1 kg per week and report to Additional Chief Medical Officer, IA Palam periodically for their height and weight check. However, no order was issued grounding them. Thereafter, on December 25,1990 another Circular was issued indicating the names of the Air Hostesses who were found overweight. In this circular also the name of petitioner Sheila Joshi appeared and besides her, the names of petitioners Ms. Kusum Chakrobarty and Kiran Choudhary also figured. All the three were found to be over-weight by 4.5 kgs, 6kgs and 1.5 kgs respectively. In the meanwhile on September 17, 1991 came the revised height & weight chart. It was circulated to all the members of the Cabin Crew. It laid down weight limits for Air Hostesses between the age group of 19 & 36 years and above with reference to their height. It was mentioned at the foot of the circular that “Marriage, child bearing and raised superannuation age have been taken into consideration while making this height and weight chart. No additional allowance is therefore admissible. ” However, on June 6, 1996, a Circular was issued stating that the cabin crew who were to be grounded due to

overweight by more than 10 kgs were to be treated on leave upto the time they reduce their weight according to the specified limits and in case their leave stood exhausted they were to be treated on leave without pay. Later 10 kgs was brought down to 7 kgs by a circular dated November 13/17, 1998, then to 5 kgs by circular dated May 20, 1999, to 4 kgs by circular dated January 3, 2000, to 3 kgs by circular dated October 31st 2000 and ultimately on May 4,2006 even the allowance of 3 kgs was withdrawn and was made effective from June 15,2006. All cabin crew were advised to adhere to the height and weight norm as laid down for them. It is this circular of May 4,2006 which has been made the basis by the petitioners to approach this court.

One thing which emerges from the above narration of facts is that right from the day of their appointment, it was known to the petitioners that they were to maintain body weight standards as laid down by the Airlines from time to time. It was made a condition of their appointment and they had knowingly and willingly accepted the same. Therefore, this condition fructified into a consensual contract between the parties. True, in the past, this condition of their contract was not enforced with all its rigour. Rather, one notices soft peddling and in no case action in terms of the contract was ever taken. The violators were simply grounded and were not paid their salaries if there was no leave to their credit.

Should the petitioners make a grievance merely because the concessions which they were enjoying have been withdrawn and

they have been asked to strictly adhere to the body weight chart in keeping with their appointment letters?

The petitioners, in my view have no case. Their appointment letter proves to be their nemesis. They agreed to the terms contained therein. They are in the employment of the Airlines from 1980-82. They were being subjected to six-monthly height and weight check. The Circulars were being issued from time to time asking the Cabin Crew to keep their weight within the prescribed limits and if they were found in excess of the weight some of them at times were grounded. It is not for the first time on May 4, 2006 that they were asked to comply with the weight chart. Therefore, they cannot now raise a grouse on that account. Also, it is not for the first time that they have been told that in case of grounding they will not be paid their salaries in case there is no leave to their credit. They were told about this way back on November 4, 1987 when, as noticed above, a Circular to that effect was issued. They did not object to it then. What new has happened now that they have come to the Court seeking quashing of Circular of May 4, 2006 and also the direction that they will not be paid their salary during the period of grounding if they do not have leave to their credit?

It was stated that clause 9 of the Appointment Letter of the petitioners provided that they were to be governed by the Indian Airlines Flying Crew Service Regulations and as per Regulation No. 12 of the same members of the Flying Crew were to be retained in the service of the company only if they remained medically fit for flying duties. It was thus sought to be contended that if a member of the

Cabin Crew was found to be medically fit he or she could not be grounded or deprive of his salary merely on account of being over-weight. It is not in dispute that the petitioners were found to be medically fit.

It is true that Regulation No. 12 provided that a member of the Cabin Crew was to be retained in service so long as he was medically fit but equally true is the fact that the appointment letter also provided that if they did not maintain the weight within the prescribed limits their services were liable to be terminated. This clause in the appointment letter was in addition and not in derogation to the clause that their appointment was to be governed by the Indian Airlines Service Regulation. In this view of the matter, the above said Regulation does not wash away the terms of condition found in the letter of appointment. The petitioners may have been found to be medically fit but the weight check which is undertaken bi-annually has its genesis to the clause in the Appointment Letter . Therefore, if the weight is not found to be in accord with the required limit, the consequences as laid down in the Appointment Letter flow.

It was contended by the learned counsel for the Indian Airlines and in my view rightly that clause 9 of the Appointment Letter of the petitioners empowered them to remove them from service in the event of their not maintaining body weight as per the weight chart yet it never took the extreme step of removing them from service. The Airlines, it is stated, was more than indulgent towards them. They were simply being warned from time to time to bring down their weight and were also given time to do so. It was stated that this “benevolent

approach" was adopted to enable the defaulting members of the Cabin Crew to comply with the norms. The Circulars which contained these "benevolent measures" were agreed to and acted upon by the members of the Cabin Crew. As a matter of fact even as per the impugned Circular of May 4, 2006 no action in terms of the appointment letter has been taken nor does it indicate that any such action is in contemplation. Hence, the action of grounding on account of being over-weight and non-payment of salary in the event of no leave to the credit of the Cabin Crew cannot be challenged at this distant point of time apart from the fact that it was a condition of their appointment and they had accepted it.

It was submitted on behalf of the petitioners that the Air Corporation Act 1953 was repealed by the Air Corporation (Transfer of Undertaking and Repeal) Act of 1994 and by virtue of Section 8 of the repealing Act the employees of the Corporation as on the appointed day were to continue to enjoy the same remuneration, same terms and conditions and the same obligations as they enjoyed before coming into force of the repeal of the Air Corporation Act. On the strength of Section 8, it was argued that by virtue of the Circular issued on November 4, 1987 the flying Crew enjoyed the grace of 10% of the weight over and above the standard weight as laid down. It was sought to be contended that as after the Circular of November, 1987, no revised weight chart was brought into existence till the repeal of the Air Corporation Act of 1953, therefore, the grace of 10% continued to remain in force even after the coming into force of the repealed Act and in view of Section 8 of the said Act the same could not be

withdrawn. It was also argued that after the coming into force of the Air Corporation (Transfer of Undertaking and Repeal) Act 1994 the Airlines did not possess any power to issue Circulars with regard to weight charts as that would have meant changing the terms and conditions of service which in view of Section 8 of the repealed Act was not permissible.

I need not go into the question whether the Air Corporation Transfer of Undertaking and Repeal Act took away the powers of the Airlines to issue Circulars because the argument proceeds on the basis that Circulars issued prior thereto alone would hold the ground. If that be so it is not understood how it is the Circular of November 1987 which will apply and not the revised chart which was issued in 1991. In any case the petitioners were quiet so long as the grace of over weight upto 10 kgs was allowed and even till date do not find fault with those circulars which were issued after the repeal Act but now when no grace at all is being given and it has been completely withdrawn they are questioning the authority of the Airlines to issue the Circulars. What does this mean? It means that so long as it suited the petitioners the Airlines had the authority to issue the Circulars and when the weight chart is being strictly followed they are finding fault with it.

Lastly it is not without rationale that the flying Crew has been subjected to certain standards of height and weight. Their job profile demands it. The aircrafts fly at a very high altitude. Quite often emergency situations arise because of air turbulence or on account of aircraft developing snag. The Cabin Crew including the Air

Hostess are expected to handle the situation deftly, with alacrity and presence of mind . All this will be possible only if the Cabin Crew possesses the highest order of physical and mental fitness. And let us not forget that in this era of cut throat competition no Airlines can afford to remain lax in any department whatsoever, be it the personality of its crew members, their physical fitness in all respects or the air worthiness of the air craft or in relation to other facilities such as catering etc. If keeping in view this kind of job performance the Air Hostesses are asked to battle their bulge, control their girth and keep at desired level the affluence of their body weight as per the norms, it is not understood how it is in any way unfair, unreasonable and insulting to their womanhood. It is not the Air Hostesses alone which are put to these rigours. The other Members of the flying crew are also required to maintain a particular weight standard. If by preservance the snails could reach the ark, why can't these worthy ladies stand on and turn the scale.

For the foregoing reasons, I find no merit in the writ petitions, the same are dismissed but without burdening further with costs.

May 31, 2007. REKHA SHARMA, J.
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